

**N.D.A.G. Letter to Schulz (Feb. 2, 1988)**

February 2, 1988

Ms. Wendy P. Schulz  
Stutsman County State's Attorney  
511 2nd Avenue SE  
Jamestown ND 58401

Dear Ms. Schulz:

Thank you for your letter of November 16, 1987, in which you request my opinion on several questions regarding the fiscal administration of the Stutsman County library fund. I apologize for the delay in responding to you. I will answer your questions in the order presented.

Your first inquiry concerns whether the county treasurer may issue checks from the library fund pursuant to N.D.C.C. § 40-38-02(2) without the invoices and/or checks running through the County Auditor's Office. As amended by the 1987 Legislative Assembly, N.D.C.C. § 40-38-02(2) states as follows:

The city auditor or county treasurer shall establish and maintain the fund to account for library revenues and shall make payments from the fund for invoices that have been submitted and approved by the governing body of the library. In the case of a contract with another library for service delivery, the city auditor or county treasurer shall promptly transmit all funds received to the established library fund of the agency delivering service. On request of the city auditor or county treasurer and during an audit, the governing board of the library shall supply its records. The records must be provided on a timely basis. The fund may not revert to the governing body of the city or county at the end of any fiscal year. The fund must be used exclusively for the establishment and maintenance of public library service.

Prior to its amendment by the 1987 Legislative Assembly, the first sentence of N.D.C.C. § 40-38-02(2) provided as follows:

The city auditor or county treasurer shall keep the fund separate and apart from the money of the county or municipality and promptly transmit all funds received pursuant to this section within thirty days of receipt to the board of directors.

It appears that prior to the 1987 amendment, the library fund was maintained as a separate checking account under the control of the Library Board of Directors and payments from the fund were handled directly by the Board without involving the city auditor or the county treasurer. The 1987 amendment vested the control and

administration of the library fund with the city auditor or the county treasurer. Although the statute is less than clear, it is my opinion that the library fund should be maintained and administered by the city auditor or the county treasurer in the same manner as other city or county funds. In this regard, the following statutes are relevant in determining the coordination of fiscal administration between the county auditor and the county treasurer.

11-13-04. Auditor is chief financial officer of county -- To keep account with treasurer. The county auditor shall be the chief financial officer of the county and shall keep complete and detailed records of all financial transactions of the county, charging the treasurer with the amount of all property taxes assessed and levied by the state and by any taxing subdivision, together with all interest, penalties, and other costs turned over to him by his predecessor. In determining the treasurer's responsibility for collections, the county auditor shall credit him with all tax payments, cash discounts allowed, abatements, the amount of uncollected taxes delivered to his successor in office, or other credits as provided by law. The county auditor shall charge the treasurer with all moneys collected by him or received by him in his official capacity and shall credit him with all payments by warrant or as otherwise provided by law and with all moneys delivered to his successor in office.

11-14-06. County treasurer to receive and pay out county money. The county treasurer shall receive all moneys belonging to the county, from whatever source they may be derived, and all other moneys which by law are directed to be paid to him. He shall pay out moneys belonging to the county only on a properly drawn county warrant or in any matter provided by law.

11-14-10. Daily report to auditor -- Distribution of funds. The county treasurer shall prepare a daily statement of all receipts and disbursements and shall transmit a copy of the same to the county auditor together with all warrants and other vouchers paid and duplicate copies of all receipts. He shall make a distribution on or before the tenth working day of each calendar month to the several county funds and taxing subdivisions of all taxes received and of all other funds that are required by law to be distributed.

Although the county treasurer is generally responsible for all receipts and disbursements of county funds, including the moneys of the county library fund, N.D.C.C. §§ 11-13-04 and 11-14-10 require the county treasurer to furnish the county auditor with a complete record of all financial transactions of the county. Additionally, section 11-14-06 requires that payments by the county treasurer be made only upon properly drawn warrants prepared by the county auditor. There is no exception to these requirements for the financial transactions of the County Library Board.

Your second question is whether the county treasurer may keep the library fund money in

the same accounts presently established by the County Library Board and simply issue checks on these existing accounts or must the fund be handled like other special fund moneys of the county and disbursed by official county checks.

As indicated above, prior to the 1987 amendment the library fund was maintained as a separate checking account under the control of the Library Board of Directors and payments from the fund were handled directly by the Board without involving the city auditor or the county treasurer. The 1987 amendment divests the Library Board of its recordkeeping responsibilities regarding the library fund and entrusts these functions with the city auditor or county treasurer. However, as indicated previously, the county treasurer must perform his administrative responsibilities relative to the library fund in accordance with other statutory procedures. Therefore, it is my opinion that the library fund must be maintained and administered by the county treasurer in the same manner as other special county funds and disbursements from the library fund should be made in accordance with established procedures.

Your third question is who has custody of money donated for the benefit of the County Library. N.D.C.C. § 40-38-08 states as follows:

Donations -- How accepted -- Board of directors as trustee. All persons desirous of making donations of money, books, personal property, or real estate for the benefit of the library may vest the same in the board of directors. The board shall hold and control all property accepted for the use of the library and reading room as a special trustee.

N.D.C.C. § 40-38-08 must be interpreted in conjunction with N.D.C.C. § 40-38-02 to give effect to both sections. County of Stutsman v. State Historical Society, 371 N.W.2d 321 (N.D. 1985). Pursuant to N.D.C.C. § 40 38-02(1) and (2), all moneys received from any source must be deposited in the library fund of which the county treasurer is the custodian and bookkeeper on behalf of the Library Board. The Library Board would continue to hold all property other than money in trust for the benefit of the library and reading room pursuant to N.D.C.C. § 40-38-08.

Your fourth inquiry concerns whether the County Library Board has any authority with respect to where and how the library fund money is deposited and invested. N.D.C.C. § 21-04-05 provides that the "proper board" may designate depositories for public funds. "Board" is defined to mean "the governing board of any public corporation, including the board of county commissioners, the city council, the board of city commissioners, the school board, the board of township supervisors, and the park board." Although N.D.C.C. ch. 40-38 does not clearly indicate that the Library Board is authorized to designate depositories for its funds, it appears that the Library Board is intended to have complete authority over the library fund other than the necessary recordkeeping functions. As such, it is my opinion that the County Library Board is authorized to designate a depository for its funds. Hopefully, this designation can be coordinated with the existing designated depositories for the county so as to avoid administrative difficulties for the county treasurer and county auditor in performing their respective responsibilities.

The depository must be a "financial institution" situated and doing business within the state or the Bank of North Dakota. N.D.C.C. § 21-04-05. After designating a depository for its funds, the governing body is also required to ensure that the deposits are adequately secured by a surety bond or federal insurance and/or pledge of securities. N.D.C.C. §§ 21-04-07, 21-04-08, and 21-04-09. If the requirements of N.D.C.C. ch. 21-04 are satisfied, it is my opinion that the County Library Board may invest its moneys in either demand deposits or time deposits of an appropriate financial institution.

You also ask whether the County Library Board has any authority with respect to the investments of the library fund. N.D.C.C. § 21-06-07 provides that political subdivisions, including counties, cities, school districts, park districts, and townships, may "invest surpluses in their general fund, or surpluses in any special or temporary fund, in bonds, treasury bills, and notes or other securities which are a direct obligation of the treasury of the United States or of an instrumentality thereof. . . ." Inasmuch as the County Library Board is the alter ego of the county, N.D.C.C. ch. 40-38, it is my opinion that the investment authority of N.D.C.C. § 21-06-07 is available to the County Library Board. I am not aware of any other investment authority for the County Library Board.

Your final question concerns whether the County Library Board has any authority with respect to the internal procedures used by the county treasurer in maintaining and disbursing money from the library fund. N.D.C.C. § 40-38-02(2) seemingly gives the county treasurer complete responsibility with respect to internal procedures for administering the fund. Inasmuch as the legislative history of N.D.C.C. § 40-38-02(2) indicates that its purpose is to ensure that the fiscal administration of library funds complies with Generally Accepted Accounting Standards and the Single Audit Act of 1984, it seems logical that such internal procedures must be directed by the county treasurer. Of course, the county treasurer has no authority over the fund other than recordkeeping and custodial functions and is required to comply with the directions of the governing body of the library regarding designated depositories, investments, and expenditures.

If you have any further questions on this matter, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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